

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

AFSCME, LOCAL 410,	)	
	)	
Petitioner,	)	
v.	)	
	)	
CITY OF ST. LOUIS, DEPARTMENT OF	)	
HEALTH AND HOSPITALS,	)	Public Case Nos. R 95-002 Vector Control
	)	R 95-003 Communicable
Respondent,	)	Disease
	)	R 95-007 Environmental
and	)	Health
	)	
CARPENTERS' DISTRICT COUNCIL OF	)	
GREATER ST. LOUIS, LOCAL 795,	)	
	)	
Intervenor.	)	

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1986. In June, 1994, AFSCME, Local 410 (hereinafter referred to as AFSCME) petitioned this Board for a bargaining unit of all unrepresented employees in the Health Division of the St. Louis Department of Health and Hospitals. The Board dismissed that petition in July, 1994, because AFSCME failed to submit the requisite showing of interest for that proposed unit. AFSCME subsequently filed three election petitions with the Board seeking three separate bargaining units in the Health Division of the St. Louis Department of Health and Hospitals. The petition filed in Case R 95-002 seeks a unit of workers in the Vector Control subsection of the Environmental Health Services section of the Health Division. The petition filed in Case R 95-003 seeks a unit of clerical workers in the Communicable Disease Control section of the Health Division. The petition filed in Case R 95-007 seeks a unit of clerical workers in the Environmental Health subsection of the

Environmental Health Services section of the Health Division. Prior to the matter going to hearing, Carpenters' District Council of Greater St. Louis, Local 795 (hereinafter referred to as the Carpenters) was allowed to intervene. A hearing on the matter was held on December 19, 1994 in St. Louis, Missouri, at which representatives of AFSCME, the Carpenters, and the City were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member Joel Rosenblit and employer member Lois Vander Waerdt. At the hearing the parties were given full opportunity to present evidence. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law and Order.

#### **FINDINGS OF FACT**

As part of its governmental functions, the City of St. Louis operates a Department of Health and Hospitals. The Department oversees the two functions referenced in its title--Health and Hospitals. Each of these functions is separated into a division which is distinct from the other. Only the Health Division is involved in the instant matter.

The division head is known as a commissioner. The commissioner is responsible for establishing policies and programs, overseeing staffing and funding, and managing the day-to-day operation of the entire division. As the appointing authority, the Health Commissioner has ultimate power with respect to hiring, firing, and disciplining the 240 employees in the Health Division.

The Health Division is organized into different sections according to the health function served or the health problem addressed. Each section does different work. There are ten sections in the Health Division: Administration, Communicable Disease, School Health Service, Public Health Laboratory, Animal Regulation Center (also known as Animal Control), Environmental Health Services, Lead Poison Control, Vital Records

Bureau (also known as Vital Statistics), Immunization Service, and Food and Beverage Control. Three of these sections, namely Administration, Communicable Disease and Environmental Health Services, in turn, have subsections. Administration consists of the Health Commissioner's management staff, the administrative services staff, and the health planning staff. Communicable Disease consists of Sexually Transmitted Disease, Epidemiology/Disease Prevention, the Metro AIDS Program, and the Community Outreach for Risk Reduction (CORR) Program. Environmental Health Services consists of Environmental Health and Vector Control. The remaining seven sections in the Health Division do not contain subsections. Thus, those sections deal only with the topic referenced in their title. For example, the School Health section, as the name implies, deals exclusively with school health.

With the exception of Vector Control and Animal Regulation, all of the sections and subsections of the Health Division are located at a facility at 634 N. Grand Ave. Vector Control is located at 1212 N. 13th St. No other section or subsection of the Health Division is located there with Vector Control. Since Vector Control is physically separate from the rest of the Health Division, Vector Control workers seldom have working contact with other employees of the Health Division.

Communicable Disease Control, as noted above, is one of the sections in the Health Division. There are over 100 employees in the section: about 50 employees are in the Sexually Transmitted Disease subsection; about 18 employees are in the Epidemiology/Disease Prevention subsection; about 21 employees are in the Metro AIDS Program subsection; and about 19 employees are in the CORR Program subsection. The numbers just listed include the clerical workers. There are nine clericals in the Sexually Transmitted Disease subsection, with another six clericals in the other three subsections combined. AFSCME seeks a unit of clerical workers in the Communicable Disease Control section. It is unclear from the record though whether

AFSCME seeks the clerical workers from all four subsections of that section (a potential unit of 15 employees), or just the clerical workers from the Sexually Transmitted Disease subsection of that section (a potential unit of nine employees).

Environmental Health Services, as noted above, is one of the sections in the Health Division. A subsection of this section is also entitled Environmental Health. There are 24 employees in the Environmental Health subsection, namely 17 environmental health officers and seven clericals (specifically six typist-clerks and one secretary I). AFSCME seeks to include the clerical workers from this subsection (Environmental Health) in a bargaining unit.

Vector Control, as noted above, is the other subsection in the Environmental Health Services section of the Health Division. Vector Control is separate and distinct from Animal Regulation. The employees who work in Vector Control deal with sanitation problems and mosquito and rat control. This work is done in the field; not at headquarters. There are 13 non-supervisory employees in Vector Control: two laborers, nine pest control workers, a clerk and a mechanical maintenance worker. AFSCME seeks to include all of these employees in a bargaining unit with the exception of the mechanical maintenance worker. The record in a companion case involving these same parties (Public Case R 94-038) indicates that the City's mechanical maintenance workers are included in a city-wide bargaining unit.

Insofar as the record shows, the only employees in the Health Division currently included in bargaining units are the mechanical maintenance worker just referenced and the employees in the Lead Poison Control section.

With regard to the latter, the record indicates that in July, 1994, this Board certified the Carpenters as the bargaining representative for a bargaining unit in the Lead Poison Control section of the Health Division (Case No. R 94-039). As previously noted, Lead Poison Control is one of the ten sections in the Health Division. About a

dozen non-supervisory employees are included in this wall-to-wall bargaining unit, with about half being community program aides and about half being clerical employees. This unit was voluntarily agreed to by the parties. Since the parties voluntarily agreed to the composition of that bargaining unit, this Board did not rule on either the composition or appropriateness of that unit.

Charles Bohannon is an Application Analyst II on the Administrative Services staff of the Administration section. Chana Morton is a Secretary I in the Sexually Transmitted Disease subsection of the Communicable Disease section. Susie Robinson is a Secretary I in the CORR Program subsection of the Communicable Disease section. Patricia Dean Wagner is a Typist Clerk II in the Environmental Health Services section. Marion Moore is a Secretary II in the Public Health Laboratory. Judy Mason is a Clerk III in the Environmental Health Services section. There is one Social Worker II in the CORR Program subsection of the Communicable Disease section. There is one Kennel Worker II at the Animal Regulation Center. There is one Medical Technology II at the Public Health Laboratory. There are eight Environmental Health Officer IIs in the Environmental Health Services section.

### **CONCLUSIONS OF LAW**

AFSCME proposes the creation of three separate bargaining units in the Health Division of the St. Louis Department of Health and Hospitals. First, it seeks a unit of workers in the Vector Control subsection of the Environmental Health Services section. Second, it seeks a unit of clerical workers in the Environmental Health subsection of the Environmental Health Services section. Third, it seeks a unit of clerical workers in the Communicable Disease section. According to AFSCME, all three proposed units constitute appropriate bargaining units within the meaning of the Missouri Public Sector Labor Law. Both the City and the Carpenters disagree. In their view, the proposed units are inappropriate. Both contend that any additional bargaining units in the Health

Division should be division wide, not along the section or subsection lines proposed by AFSCME. The City also contends that if any of the following employees are in a unit found appropriate, they should be excluded as confidential employees: Application Analyst II Charles Bohannon, Secretary I Chana Morton, Secretary I Susie Robinson, and Typist Clerk II Patricia Dean Wagner. Additionally, the City contends that if any of the following employees are in a unit found appropriate, they should be excluded as supervisory employees: Secretary II Marion Moore, Clerk III Judy Mason, the Social Worker II, the Kennel Worker II, the Medical Technologist II and the eight Environmental Health Officer IIs.

In our view, the contentions just noted pose the following issues: 1) are any or all of the units proposed by AFSCME appropriate; and 2) depending on which bargaining unit(s) are appropriate, if any, are there positions which should be excluded from same as confidential or supervisory employees. In the discussion which follows, these issues will be addressed in the order just listed.

Section 105.500(1) of the Missouri Public Sector Labor Law defines an appropriate bargaining unit as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

The statute does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", nor does it set forth any criteria to determine same. The Board has therefore developed its own criteria for determining whether employees have a community of interest. Those factors, as set forth in AFSCME, Missouri State Council 72 v. Department of Corrections and Human Services, Case No. 83-002 (SBM 1984), are as follows:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours or work and other terms and

conditions of employment.

3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

Not all of these factors necessarily deserve the same weight. In some cases, one or more of the factors may predominate.<sup>1</sup>

Our role in making bargaining unit determinations is to decide whether the specific unit sought is an appropriate unit; not the most appropriate unit. This Board has interpreted Section 105.525 to mean that there is a need for a mix of bargaining units which afford employees the opportunity to be represented in workable units by unions of their own choosing, which may reasonably be expected to be concerned with the unique interests and aspirations of the employees in said unit. We recognize that a balance must be struck between this need and an unreasonable number of bargaining units. It is for that reason that the Board examines the facts of each case to determine whether the particular bargaining unit being sought is appropriate.

In our view, two of the above-noted factors are of critical importance in the disposition of these petitions, namely factors 9 (administrative organization of employer) and 11 (extent of union organization). Accordingly, we begin our analysis with a review

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<sup>1</sup> City of Poplar Bluff, Public Case No. UC 90-030 (SBM, 12/90).

of the following context. AFSCME originally petitioned for a division-wide bargaining unit in the Health Division. About 240 employees are in the Division's ten sections. That petition was dismissed because AFSCME failed to submit the requisite showing of interest for that proposed unit. AFSCME then filed the three election petitions involved here. This time, it is not seeking a division-wide unit nor even complete section-wide units. Instead, it seeks certain employees within sections (namely the clericals) in Environmental Health Services and Communicable Disease, and a wall-to-wall subsection of a section (namely Vector Control). There are seven clericals in the unit sought in Environmental Health, 15 clericals in the Communicable Disease section and 13 employees in Vector Control. Given the relatively small numbers involved, it is apparent that the requested units are small in terms of both scope of coverage and number of employees included. The critical question is whether they are drawn too narrowly vis-à-vis the overall Health Division to constitute appropriate units.

Attention is focused first on the petitions dealing with the clerical employees. We have no trouble deciding that the two proposed clerical units in the Communicable Disease and the Environmental Health Services sections are inappropriate because they would unduly fragment the clerical workforce in the Health Division. Our rational for this conclusion follows. We begin our discussion by noting that we have found clerical units appropriate before.<sup>2</sup> In our view, a clerical unit is normally presumptively appropriate. Here, though, that presumption is rebutted because AFSCME does not seek all the clericals in the Health Division, but rather just some (namely the clericals in two of the Division's ten sections). Given the small number of sections and employees covered by the two petitions, it is apparent that AFSCME simply "cherry picked" certain clerical employees. As a result, the two proposed clerical units do not pass muster. We believe that given the City's administrative structure, a bargaining unit composed of a single

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<sup>2</sup> Grandview C-4 School District, Public Case No. R 91-010 (SBM 9/91).



group of employees, such as the clericals, should be at least division-wide. We therefore decline to carve out the (seven) clericals in the Environmental Health Services section and the clericals in the Communicable Disease section and give them each their own unit. While it is unclear from the record whether AFSCME seeks the 15 clericals from all four subsections of the Communicable Disease section or just the nine clericals in the Sexually Transmitted Disease subsection of the Communicable Disease section, it does not matter for the purposes of this decision. Either way, the proposed unit is inappropriate. Accordingly, the two petitions seeking clerical employees are dismissed.

The remaining petitioned for unit, namely Vector Control, presents a much tougher call. It is noted at the outset that Vector Control is a subsection of the Environmental Health Services section. Thus, it is a subsection of a section. There are 13 non-supervisory employees in Vector Control: two laborers, nine pest control workers, a clerk and a mechanical maintenance worker. None of these positions is alleged to be supervisory or confidential.

Since the requested unit in Vector Control is a subsection of a section, and relatively small in terms of employees vis-à-vis the entire Health Division, our first inclination was to find the proposed unit inappropriate. Obviously, were we to do just the opposite and find a unit in Vector Control appropriate, we are well aware this would open the proverbial door to the creation of other section or subsection bargaining units in the Health Division. We did not want to open that proverbial door.

However, that door has already been opened because a bargaining unit currently exists in the Lead Poison Control section. Moreover, it was the City that opened the door because it voluntarily agreed to that bargaining unit with the Carpenters in July, 1994. In doing so, it no doubt considered the potential composition of the bargaining unit being created. The City decided, for whatever reasons, that a bargaining unit of

about a dozen Lead Poison Control workers was workable. That being so, the existence of the small unit in the Lead Poison Control section is entirely of the City's own making. That bargaining unit was not forced upon the City by this Board.

The City recognizes that it opened a Pandora's box with that bargaining unit and it asks this Board to, in effect, undo it. The City proposes to do this by having the Board now create a single division-wide bargaining unit for the entire Health Division. Obviously, were we to now do so, this would eliminate the existing bargaining unit in the Lead Poison Control section. We decline to create a single division-wide unit for just that reason, namely that it would eliminate the existing Lead Poison Control unit. This Board is not in the business of undoing the work of municipal employers and unions concerning the unit determinations that they themselves have made. Were the parties formulating bargaining units in this division completely from scratch, it may well be that this Board would not have created a unit in the Lead Poison Control section but rather would have created a single division-wide unit. However, the time for the City to ask this Board to create a single division-wide unit was before a single unit was created in the division--not afterwards.

The Lead Poison Control unit, while small numerically, is a wall-to-wall unit consisting of all non-supervisory employees in that area. The unit proposed by AFSCME for Vector Control is similarly situated in that it is also a wall-to-wall unit consisting of all non-supervisory employees in that area (with the exception of the mechanical maintenance worker which is part of a city-wide bargaining unit). Additionally, we are persuaded that the employees in Vector Control have an identifiable community of interest. First, the Vector Control employees have a primary work place that is physically separate from the workplace of all other Health Division employees. That being the case, Vector Control employees seldom have working contact with other employees of the Health Division. Second, the Vector Control employees have job

duties and skills that are distinct and unique from the other Health Division employees. Specifically, no other Health Division employees deal with mosquito and rat control. When considered together, these factors persuade us that a unit of Vector Control employees constitutes an appropriate bargaining unit.

In so finding, we are well aware that of all the bargaining units that could be created in the Health Division, a unit of Vector Control employees is certainly not the best or most ideal that could be envisioned. However, there is no requirement that it be. Rather, all that is required under the law is that the unit be "an appropriate unit".<sup>3</sup> We find that a unit of Vector Control employees, in the unique circumstances present here, constitutes an appropriate unit. The fragmentation caused by this unit is not sufficient for us to find otherwise.

That said, it is not our intent to encourage the creation of additional section-wide or subsection-wide units in the Health Division. We are hesitant to fragment large bargaining units unless a unique community of interest can be established for a smaller unit. In our view, any additional bargaining units in the Health Division will have to consist of either all remaining, unrepresented employees in the division or (as previously noted) all clericals in the division absent special circumstances such as exist with Vector Control, "i.e. geographic separation and unusual functions."

To summarize then, we have dismissed the petitions seeking clerical units in the Communicable Disease and Environmental Health Services sections on the grounds they are inappropriate. With regard to the remaining petition, we have found the proposed unit of Vector Control employees to be appropriate and ordered an election therein. Finally, while the City proposed that numerous positions be excluded on confidential or supervisory grounds, that contention was premised on those employees being included in a unit. However, none of the employees whose status is challenged

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<sup>3</sup> 105.500(2) RSMo. 1986.

by the City (i.e. those employees referenced in our Findings of Fact) is included in the Vector Control unit, the only unit found appropriate herein. That being the case, it is unnecessary for us to address the status of any of those challenged employees.

### **ORDER**

The election petitions seeking clerical units in the Communicable Disease and Environmental Health Services sections are hereby dismissed.

The proposed unit of Vector Control employees is found appropriate. Accordingly, an election is ordered therein. The description of that unit is as follows:

All employees in Vector Control, excluding supervisory, managerial, and confidential employees, employees included in other city-wide bargaining units, and all other Health Division employees.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or his designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have AFSCME, Local 410 or Carpenters' District Council of Greater St. Louis, Local 795 as their exclusive bargaining representative.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to both Unions within fourteen days from the date of this decision, an alphabetical list of names and addresses of the employees in the Vector Control

bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 9th day of May, 1995.

(SEAL)

STATE BOARD OF MEDIATION

/s/ Francis R. Brady  
Francis R. Brady, Chairman

/s/ Joel Rosenblit  
Joel Rosenblit, Employee Member

/s/ Lois Vander Waerd  
Lois Vander Waerd, Employer Member